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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
GARY JAMES ROLLER,)
)
Defendant.)
)
)
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)
)

No. CR 08-00361(A) RMW

**STIPULATION AND []
ORDER CONTINUING MOTIONS
HEARING FROM AUGUST 17, 2009 TO
AUGUST 24, 2009, AND EXCLUDING
TIME FROM AUGUST 17, 2009 TO
AUGUST 24, 2009, FROM
CALCULATIONS UNDER THE
SPEEDY TRIAL ACT (18 U.S.C. § 3161)**

The parties hereby request that the Court enter this order continuing the motions hearing from August 17, 2009 to August 24, 2009, and excluding time from August 17, 2009 to August 24, 2009. The parties, including the defendant, stipulate as follows:

1. The defendant understands and agrees to the exclusion of time from calculations under the Speedy Trial Act, 18 U.S.C. § 3161, for the period from August 17, 2009 to August 24, 2009 based upon the need for the defense counsel to investigate further the facts of the present case and determine what, if any, additional motions are appropriate. The government has produced discovery in this case and the defense counsel and defendant require additional time to review

1 and analyze this discovery.

2 In addition, on March 2, 2009, defendant filed a motion to suppress, a motion for a bill of
3 particulars and a motion to strike one of the counts as multiplicitous. On May 4, 2009, defendant
4 filed a supplemental motion to suppress. Argument for all of these motions is currently
5 scheduled to be heard on May 18, 2009. On May 11, 2009, the government filed supplemental
6 declarations in support of its opposition to defendant's motion to suppress. On August 10,
7 2009, defendant filed a supplement to his motion to suppress. The motions hearing is currently
8 scheduled for August 17, 2009. Defense counsel needs additional time to investigate and
9 prepare for the motions hearing. Government counsel will be unavailable on August 17, 2009
10 because his 7-year daughter will be having eye surgery at the Palo Alto Medical Center that day.
11 Therefore, for effective preparation and continuity of counsel and consideration of defendant's
12 motion by the Court, the parties agree that the motions hearing currently scheduled for August
13 17, 2009 and should be continued to August 24, 2009 at 9 a.m.

14 2. The attorney for defendant joins in the request to exclude time under the Speedy Trial
15 Act, 18 U.S.C. § 3161, for the above reasons, and believes the exclusion of time is necessary for
16 effective preparation of the defense; believes the exclusion is in the defendant's best interests;
17 and further agrees that the exclusion under the Speedy Trial Act, 18 U.S.C. § 3161, should be for
18 the period August 17, 2009 to August 24, 2009.

19 Given these circumstances, the parties believe, and request that the Court find, that the
20 ends of justice are served by excluding from calculations the period from August 17, 2009 to
21 August 24, 2009 outweigh the best interests of the public and the defendant in a speedy trial
22 under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A) & (B)(iv).

23 IT IS SO STIPULATED.

24 DATED: August 11, 2009

/s/ Richard Pointer
RICHARD POINTER

26 DATED: August 11, 2009

/s/ Hanley Chew
HANLEY CHEW
Assistant United States Attorney

[] ORDER

Having considered the stipulation of the parties, the Court finds that: (1) the defendant understands and agrees to the exclusion of time from calculations under the Speedy Trial Act, 18 U.S.C. § 3161, August 17, 2009 to August 24, 2009, based upon continuity of defense counsel, the need for the defense counsel to investigate further the facts of the present case, review the discovery that the government has already provided and evaluate further possible defenses and motions available to the defendant; (2) the exclusion of time is necessary for effective preparation of the defense and continuity of counsel and is in the defendant's best interests; and (3) the ends of justice are served by excluding from Speedy Trial calculations the period August 17, 2009 to August 24, 2009.

Accordingly, the Court further orders that (1) the motions hearing set for August 17, 2009 is vacated and that the next appearance date before this Court is scheduled for August 24, 2009 at 9:00 a.m.; and (2) the time Argument for all of these motions are currently scheduled to be heard on August 24, 2009 is excluded from time calculations under the Speedy Trial Act, 18 U.S.C. § 3161.

IT IS SO ORDERED.

DATED: 8/12/09


THE HONORABLE RONALD M. WHYTE
United States District Court Judge